Dover Energy, Inc., Blackmer Division *and* Thomas Kaanta. Case 07–CA–094695

September 17, 2014

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS MISCIMARRA AND HIROZAWA

On December 24, 2013, Administrative Law Judge Keltner W. Locke issued the attached bench decision. The General Counsel filed exceptions and a supporting brief. The Respondent filed an answering brief, and the General Counsel filed a reply.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Decision and Order. Specifically, for the reasons discussed below, we reverse the judge's finding that the Respondent did not violate Section 8(a)(1) of the Act by threatening employee Thomas Kaanta with discipline for engaging in union and protected concerted activities.

I.

The Respondent manufactures liquid-transfer pumps at its facility in Grand Rapids, Michigan. For years, Auto Workers Local Union No. 828 has represented a unit of the Respondent's production and maintenance workers. During the summer of 2012,[1] the Respondent and the Union were engaged in negotiations for their most recent successor collective-bargaining agreement.

Kaanta, a shop steward, was responsible for investigating and handling contractual grievances on behalf of the Union. On June 12, Kaanta presented to Director of Human Resources John Kaminski a written request for information about financial relationships between the Respondent and members of the Union, including its bargaining committee. The request stated that Kaanta needed the information "for the purpose of future bargaining." Kaminski asked Dennis Raymond, the Union's president and a member of its bargaining committee, whether the Union had authorized Kaanta's request. Raymond replied that the Union had not, and that the Respondent should not provide the information. By letter dated June 19, the Respondent denied the request, stating that information requests must be made through the bargaining committee, that Kaanta was not on the bargaining committee, and that his request was "outside [his] scope."

On August 10, Kaanta requested information about the hours and pay of all employees, for payroll periods beginning August 12 and continuing until the new contract's ratification, as well as photocopies of employee paychecks from two specified earlier pay periods. This request stated that the information was being sought "for labor board investigation." Again the Respondent asked the Union whether it had authorized the request, and again the Union replied that it had not, and that the Respondent should not provide the information.

On August 23, the Respondent issued Kaanta a letter, which stated:

> This is to serve as a verbal warning for continued frivolous requests for information (photo copies of all employee paychecks for a period ending December 1, 2007 and pay period August 5, 2012 and spreadsheets for total hours and pay for each pay period starting with August 12, 2012, and every pay period thereafter, until the contract is ratified) and interfering with the operation of the business. You are not on the Bargaining Committee and fail to work within the parameters of such to bring matters to the Bargaining Committee. We are not individually bargaining with you or any other individual.
>
> Similar requests such as this will result in further discipline up to and including discharge.

Pursuant to an unfair labor practice charge filed by Kaanta, the General Counsel issued a complaint alleging, inter alia, that the Respondent violated Section 8(a)(1) by threatening employees with discipline for engaging in union and protected concerted activities.[2]

The judge found that because the Union had not authorized Kaanta's information requests, the requests did not constitute union activity. The judge also found that the General Counsel failed to show that the information requests were otherwise protected activity, because the record did not establish that Kaanta had requested information on behalf of other employees or discussed with other employees the concerns underlying the requests. Therefore, the judge concluded that the Respondent had not violated the Act.

[1] Dates are in 2012 unless otherwise specified.

[2] The complaint also alleged that the warning itself violated Sec. 8(a)(3) and (1). There are no exceptions to the judge's dismissal of that allegation.

II.

"The Board's well-established test for interference, restraint, and coercion under Section 8(a)(1) is an objective one and depends on 'whether the employer engaged in conduct which, it may reasonably be said, tends to interfere with the free exercise of employee rights under the Act.'" *ITT Federal Services Corp.*, 335 NLRB 998, 1002 (2001) (quoting *American Freightways Co.*, 124 NLRB 146, 147 (1959)). The question of whether the Respondent's warning to Kaanta violated Section 8(a)(1) accordingly turns on whether the warning would reasonably be understood to proscribe future protected activity. See id. at 1002–1003. We find that it would.[3]

Section 7 protects a union steward's activity in seeking information for the purpose of investigating potential grievances under the terms of a collective-bargaining agreement. See, e.g., *Allied Aviation Fueling of Dallas, LP*, 347 NLRB 248, 253 (2006) ("It is well established that 'union stewards filing and processing grievances on behalf of other employees enjoy the protection of the Act'") (quoting *Roadmaster Corp.*, 288 NLRB 1195, 1197 (1988)), enfd. 490 F.3d 374 (5th Cir. 2007); *Consumers Power Co.*, 245 NLRB 183, 187 (1979) (steward's informal investigation of a disagreement that had not yet become a formal grievance was protected by the Act). Moreover, Section 7 protects concerted activity by any employee who seeks "to initiate or to induce or to prepare for group action." *Meyers Industries*, 281 NLRB 882, 887 (1986), affd. sub nom. *Prill v. NLRB*, 835 F.2d 1481 (D.C. Cir. 1987), cert. denied 487 U.S. 1205 (1988).

Here, the August 23 warning referred to Kaanta's August 10 request for information about unit employees' hours and pay and specifically informed Kaanta that "[s]imilar requests such as this will result in further discipline up to and including discharge." But future requests for such information could well be protected. For example, Kaanta could seek information about the hours and pay of unit employees for the purpose of investigating a potential grievance. Contrary to our dissenting colleague, we therefore find that Kaanta would reasonably conclude from the language of the warning that such a request, though protected, could trigger the warning's threat of discipline or discharge. Accordingly, we find that the Respondent's threat of discipline for "similar requests" violated Section 8(a)(1).[4]

AMENDED CONCLUSIONS OF LAW

Substitute the following for Conclusion of Law 2 in the judge's decision.

"2. By threatening employee Thomas Kaanta with discipline if he engaged in union and protected concerted activities, the Respondent has interfered with, restrained, and coerced him in the exercise of rights guaranteed in Section 7 of the Act and has violated Section 8(a)(1) of the Act."

REMEDY

Having found that the Respondent has violated Section 8(a)(1) of the Act by threatening employee Thomas Kaanta with discipline for engaging in union and protected concerted activities, we shall order that it cease and desist from that activity.

ORDER

The National Labor Relations Board orders that the Respondent, Dover Energy, Inc., Blackmer Division, Grand Rapids, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with discipline if they engage in activities on behalf of the Union or otherwise engage in protected concerted activities.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post at its Grand Rapids, Michigan facility copies of the at-

[3] We find no merit in the Respondent's assertion that the General Counsel failed to allege or litigate this theory of the case before the judge. Pars. 8 and 10 of the complaint alleged that the Respondent violated Sec. 8(a)(1) by threatening employees with discipline for engaging in union and protected concerted activities. Furthermore, the General Counsel argued in opening and closing statements at the hearing that the Respondent, by threatening Kaanta with discipline up to and including discharge if he made additional information requests, had violated Sec. 8(a)(1) by restraining Kaanta's future protected conduct.

[4] We find it unnecessary to decide whether Kaanta's June 12 and August 10 information requests, which occasioned the warning, were themselves protected activity, because Kaanta could reasonably understand the warning to prohibit future protected activity. See, e.g., *Ellison Media Co.*, 344 NLRB 1112, 1113–1114 (2005) (declining to pass on whether email that elicited employer's statement "this needs to stop now" was itself protected, while finding statement violated Sec. 8(a)(1) because employees would reasonably understand statement to prohibit other protected activity); cf. *Yale University*, 330 NLRB 246, 250 (1999) (permitting General Counsel to amend complaint to allege that threats occasioned by unprotected strike violated Sec. 8(a)(1) "because they could reasonably be understood to be directed against participation in protected concerted activity in general").

Furthermore, we need not pass on the General Counsel's exceptions to the judge's findings about the motives underlying Kaanta's and the Respondent's actions, because neither party's motives are relevant to the 8(a)(1) allegation. See, e.g., *ITT Federal Services Corp.*, supra, at 1002–1003 and fn. 14; *Exxel/Atmos, Inc. v. NLRB*, 147 F.3d 972, 975 (D.C. Cir. 1998).

tached notice marked "Appendix."[5] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 23, 2012.

(b) Within 21 days after service by the Region, file with the Regional Director for Region 7 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. September 17, 2014

Mark Gaston Pearce, Chairman

Kent Y. Hirozawa, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER MISCIMARRA, dissenting.

I agree with my colleagues that the question this case presents is whether employee and union steward Thomas Kaanta would have reasonably understood that Respondent's lawful discipline (for submitting an information request outside the scope of Kaanta's steward duties) also threatened discipline for *future* information requests that were within the scope of his duties. I disagree with my colleagues' affirmative answer to that question. In my view, a reasonable employee in Kaanta's situation would have understood perfectly well that the warning did not threaten future discipline over legitimate information requests. As explained below, I would affirm the judge's dismissal of the complaint.

Kaanta's responsibilities as union steward included investigating potential grievances, and his authorization from the Union to request information was limited accordingly. During the summer of 2012, the Respondent and the Union were negotiating a successor collective-bargaining agreement. In June and August 2012, while bargaining was ongoing, Kaanta submitted requests for information that had nothing to do with investigating any potential grievance.

Kaanta's June request was for information about financial relationships between the Respondent and members of the Union, which Kaanta said he needed "for the purpose of future bargaining." The Respondent asked Union President Dennis Raymond if the Union had authorized the request. Raymond said it had not and told Respondent not to furnish the information. The Respondent informed Kaanta that his request was "outside [his] scope," as he was not on the bargaining committee.

Kaanta's August request was for certain wage and hour information, which Kaanta said he needed "for labor board investigation," but which appeared to be related to the ongoing contract negotiations.[1] Again, the Respondent asked Raymond if the request was authorized by the Union, and again Raymond said it was not and to disregard it. This time, the Respondent issued Kaanta the discipline at issue here. "This is to serve as a verbal warning for continued frivolous requests for information," the warning began. After detailing the specifics of the August request, the warning continued: "You are not on the Bargaining Committee and fail to work within the parameters of such to bring matters to the Bargaining Committee. We are not individually bargaining with you or any other individual." Immediately following those sentences, the warning concluded: "Similar requests such as this will result in further discipline up to and including discharge."

Contrary to my colleagues, a reasonable employee in Kaanta's position would *not* understand "[s]imilar requests such as this" as referring to future legitimate requests for wage and hour information for the purpose of investigating potential grievances. Such a future request would clearly be within the scope of Kaanta's steward duties, and the record is devoid of evidence that the Re-

[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

[1] Kaanta asked for information about hours and pay of all employees for payroll periods beginning August 12 and continuing until the contract under negotiation was ratified.

spondent has ever warned Kaanta that requesting information to investigate a potential grievance could result in discipline or discharge. Rather, the Respondent disciplined Kaanta for his "continued *frivolous* requests for information" (emphasis added)—i.e., his requests for bargaining-related information—reiterating the point it made after his June request: "You are not on the Bargaining Committee . . . . We are not individually bargaining with you or any other individual." In this context, Kaanta would have reasonably understood that "[s]imilar requests such as this" meant "continued frivolous requests" for bargaining-related information outside the scope of Kaanta's duties and responsibilities as a union steward. In my view, no employee in Kaanta's position would have reasonably believed that he or she risked discipline by submitting legitimate future information requests for wage and hour information, including protected requests related to investigating grievances. Accordingly, I respectfully dissent.

Dated, Washington, D.C. September 17, 2014

Phillip A. Miscimarra, Member

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT threaten you with discipline if you engage in activities on behalf of the Union or otherwise engage in protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

DOVER ENERGY, INC., BLACKMER DIVISION

The Board's decision can be found at www.nlrb.gov/case/07–CA–094695 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington D.C. 20570, or by calling (202) 273-1940.

Steven E. Carlson, Esq., for the General Counsel.
William H. Fallon, Esq. & Patrick M. Edsenga, Esq. (Miller Johnson), of Grand Rapids, Michigan, for the Respondent.
Thomas Kaanta, for the Charging Party.

BENCH DECISION AND CERTIFICATION

STATEMENT OF THE CASE

KELTNER W. LOCKE, Administrative Law Judge. I heard this case on December 2, 2013, in Grand Rapids, Michigan. After the parties rested, I heard oral argument, and on December 5, 2013, issued a bench decision pursuant to Section 102.35(a)(10) of the Board's Rules and Regulations, setting forth findings of fact and conclusions of law. In accordance with Section 102.45 of the Rules and Regulations, I certify the accuracy of, and attach hereto as "Appendix A," the portion of the transcript this decision.[1] The Conclusions of Law and Order provisions are set forth below.

CONCLUSIONS OF LAW

1. The Respondent, Dover Energy, Inc., Blackmer Division, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Respondent did not violate the Act in any manner alleged in the complaint.

On the findings of fact and conclusions of law herein, and on the entire record in this case, I issue the following recommended[2]

[1] The bench decision appears in uncorrected form at page 168 through 181 of the transcript. The final version, after correction of oral and transcriptional errors, is attached as Appendix A to this Certification.

Further, a typographical error in par. 7(b) of the complaint and notice of hearing is corrected by changing the date August 10, 2013, to August 10, 2012.

[2] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, these findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board, and all objections to them shall be deemed waived for all purposes.

ORDER

The complaint is dismissed.

Dated Washington, D.C. December 24, 2013

APPENDIX A

BENCH DECISION

KELTNER W. LOCKE, Administrative Law Judge: Without authorization from higher Union officials, a shop steward twice requested that the Respondent furnish information unrelated to the performance of his duties as steward. These requests burdened Respondent, potentially intruded upon the privacy of bargaining unit members, and potentially interfered with negotiations between management and the Union for a new collective-bargaining agreement. I find that Respondent did not violate the Act by warning the steward that similar requests in the future would result in discipline, up to and including discharge.

Procedural History

This case began on December 11, 2012, when the Charging Party, Thomas Kaanta, an individual, filed an unfair labor practice charge against the Respondent, Dover Energy, Inc., Blackmer Division. Region 7 of the National Labor Relations Board docketed this charge as Case 07–CA–094695. The Charging Party amended this charge on September 11, 2013.

On September 13, 2013, the Regional Director for Region 7, acting for the Board's General Counsel, issued a Complaint and Notice of Hearing. Respondent filed a timely Answer.

On December 2, 2013, a hearing opened before me in Grand Rapids, Michigan. Both the General Counsel and the Respondent presented evidence and then rested. On December 3, 2013, counsel for the parties presented oral argument. Today, December 5, 2013, I am issuing this bench decision pursuant to Sections 102.35(10) and 102.45 of the Board's Rules and Regulations.

Admitted Allegations

Based on the admissions in Respondent's Answer, I make the following findings: The charge and amended charge were filed and served as alleged in Complaint paragraphs 1(a) and 1(b).

At all times material to this case, Respondent has been a corporation engaged in the manufacture and nonretail sale of pumps, and has maintained an office and place of business in Grand Rapids, Michigan. Respondent meets both the statutory and discretionary standards for the exercise of the Board's jurisdiction, and at all material times it has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

At all material times, John Kaminski has held the position of Respondent's Director of Human Resources, and has been a supervisor of Respondent within the meaning of Section 2(11) of the Act, and an agent of Respondent within the meaning of Section 2(13) of the Act.

At all material times the International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW), and its Local Union No. 828, have been labor organizations within the meaning of Section 2(5) of the Act. For brevity, I will refer to Local Union No. 828 as "the Union."

Complaint paragraph 7(a) alleges that on June 12, 2012, the Charging Party, in his capacity as steward for the Union, requested information from Respondent. In its Answer, the Respondent admits that the Charging Party made an information request on that date, but denies that he did so in his capacity as Union steward. Based on Respondent's admission, I find that on June 12, 2012, the Charging Party did request that the Respondent furnish certain information. Whether or not the Charging Party was acting in his capacity as steward will be addressed later in this decision.

Allegations Not Admitted

To the extent that conflicts arise, I credit the cogent, succinct testimony of Human Resources Director John Kaminski. Based upon my observations of the witnesses as they testified, I conclude that Kaminski's account is accurate and I rely on it in summarizing the facts. In general, though, the record is remarkably free of credibility conflicts.

My decision to resolve conflicts by crediting Kaminski does not imply that I considered any of the other witnesses to be less than candid. To the contrary, I believe that all witnesses strived to be accurate to the best of their recollections. However, at times, Charging Party Kaanta's answers did not seem entirely responsive, and provided a somewhat sketchy impression of his motivation and reasoning.

At all material times, Kaanta was a second shift shop steward, but not on the Union's bargaining committee. Although documents such as the Union's by-laws and the collective-bargaining agreement did not include any limiting definition of the steward's responsibilities, in practice, Kaanta represented fellow employees in grievance proceedings but did not have any duties relating to the negotiations which were underway, in the summer of 2012, for a new collective-bargaining agreement. The Union president, Dennis Raymond, and a bargaining committee, represented the bargaining unit in those negotiations.

Kaanta believed that Union President Raymond also was part-owner of a machine shop that performed work for Respondent. However, Kaanta's testimony does not include an explanation for this belief. Kaanta also believed that the asserted relationship between Respondent and Union President Raymond compromised Raymond's status as a negotiator for the employees.

On June 12, 2012, Kaanta gave the Respondent's human resources director, John Kaminski, an information request handwritten on a grievance form. It stated as follows:

Information Request

> I Tom Kaanta steward of Local 828 request any and all financial information (names, dates, amounts, etc.) pertaining to any and all financial relationships outside the collective bargaining agreement (employee/subcontractors, employee liaisons to subcontractors, employee/company investigators, monies, benefits, gifts, side deals, etc.) between Blackmer PSG (Dover) and Local 828 members, reps, pensioners, spouses, and immediate children. I request this information for the purpose of future bargaining.

Human Resources Director Kaminski accepted the paper

from Kaanta and said he would take a look at it, but did not otherwise discuss it. Kaminski then contacted the Union president, Dennis Raymond, to find out if the Union had authorized the request, and learned that the Union had not. According to Kaminski, whom I credit, Raymond told Kaminski not to provide the information. Kaminski informed the Charging Party by June 19, 2012 letter which stated, in its entirety, as follows:

> Per your request for information for various financial information and financial relationships is denied. Any requests must be processed through the normal bargaining committee process for bargaining and may or may not be disclosed as the company determines. You are not part of the negotiation committee and your request is outside your scope.

Kaminski credibly testified that he and Kaanta did not discuss this matter further. Kaanta did not file a grievance over the denial of the information request. However, during the summer, as the negotiations progressed, he became concerned with another matter.

Kaanta believed that the Respondent was making changes which increased the compensation of certain employees by placing them in higher classifications, to influence their votes on contract ratification. His testimony does not explain the basis for this suspicion.

At the bargaining table, by August, the prospect of concluding an agreement had increased the intensity of the process. The negotiators were focused on the details of the contractual language, matters which required their exquisite attention. Then, on August 10, 2012, Kaanta sent Kaminski another information request. It stated, in its entirety, as follows:

> To: John Kaminski
>
> Union officer requests photocopy of all employee paychecks for the pay period ending Dec. 1, 2007 and pay period ending August 5, 2012.

Also, I request a spreadsheet printout representing all employee total hours and pay for each pay period, starting with August 12, 2012, and every pay period thereafter, until the contract is ratified.

I believe the company is manipulating wage rates for the purpose of influencing the union vote! I request the information for labor board investigation.

Kaminski contacted the Union president. Crediting Kaminski's testimony, I find that Raymond said that Kaanta was not authorized to see all of the employees' paycheck records and that Kaminski should not honor the request. On August 23, 2012, Kaminski met with Kaanta and gave him a document titled "Verbal Warning." It stated as follows:

> This is to serve as a verbal warning for continued frivolous requests for information (photocopies of all employee paychecks for a period ending December 1, 2007 and pay period August 5, 2012 and spreadsheets for total hours and pay for each pay period starting with August 12, 2012, and every pay period thereafter, until the contract is ratified) and interfering with the operation of the business. You are not on the Bargaining Committee and fail to work within the parameters of such to bring matters to the Bargaining Committee. We are not individually bargaining with you or any other individual.
>
> Similar requests such as this will result in further discipline up to and including discharge.

The Complaint alleges that Respondent violated Section 8(a)(1) of the Act by threatening an employee with discipline for engaging in Union and protected, concerted activities, and Section 8(a)(3) and 8(a)(1) by issuing the disciplinary warning.

Analysis

Section 7 of the National Labor Relations Act gives employees the following rights: To form, join, or assist labor organizations; to bargain collectively through representatives of their own choosing; to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; to refrain from any or all such activities. 29 U.S.C. Section 157. In essence, Section 7 protects three kinds of activity: union activity, other concerted activity for "mutual aid or protection," and refraining from such activity.

The latter right, to refrain, obviously may be exercised by one person alone, but the other two arise when employees act in concert, either in the context of a union or otherwise. To establish a violation here, the General Counsel must, as part of the government's proof, establish that Kaanta's activity in question either was union activity or other protected concerted activity.

The Charging Party is both an employee of Respondent and a Union steward. However, the title of "steward" does not make Kaanta's every action a union activity. Obviously, if a steward should make a mistake in the performance of his duty as an employee, his separate role as steward would not transform the work-related task into union activity.

Actions which a steward took in the course of his union duties would, of course, constitute union activity which, with some exceptions, would enjoy the protection of the Act. However, the present record does not establish that either of Kaanta's information requests constituted union activity, and that is true even though Kaanta wrote the first of those requests on a union grievance form.

The record clearly establishes that the Union never authorized Kaanta to file information requests for any purpose except in connection with grievance processing. Kaanta filed the first information request for "the purposes of future bargaining," but the Union had not empowered him either to engage in bargaining or to make information requests related to bargaining.

Moreover, Kaanta did not have the apparent authority to act on behalf of the Union for such purposes. Before Respondent's human resources director issued the "warning," he had learned from the Union's president that Kaanta's requests had not been authorized.

Kaanta concluded the second request with the words, "I request the information for labor board investigation." In passing, it may be noted that an employer has no duty to furnish information which a union requests for this purpose. However, the determinative factors are that the Union did not authorize

Kaanta to request information for this purpose and Kaminski, who had checked with the Union president before issuing the warning, knew that Kaanta was acting without authorization.

The General Counsel cites *Nationsway Transport Service*, 327 NLRB 1033 (1999) for the proposition that an employee's activity within the union, opposing the union's leadership, also constitutes union activity protected by the Act. The present record does not establish that either the Union or its president prompted the Respondent to take disciplinary action against Kaanta and, based on the credited evidence, I conclude that they did not.

Although Kaanta's information requests arguably could be viewed as dissident intraunion activity, warranting the Act's protection, the record does not establish that Respondent had any intention of intervening in an internal Union squabble. Likewise, the evidence does not establish any intent to retaliate against or punish Kaanta because he opposed the Union's leadership.

Rather, management was simply reacting to the burden of an information request which it regarded as "frivolous," a waste of time. Indeed, the August 23, 2012 "verbal warning" began with the words "This is to serve as a verbal warning for continued frivolous requests. . ." It ended with the caution that "similar requests" would lead to disciplinary action.

The evidence clearly establishes, and I find, that Respondent was not acting from any motivation either to encourage or discourage union membership. Rather, complying with Kaanta's unauthorized information requests would have required Respondent to expend considerable time and effort. It simply did not want to be burdened by what it considered to be nonsense.

In sum, I conclude both that Respondent's decision to issue the written warning was not motivated by any intent to encourage or discourage union activities - such an intent was not a motivating factor at all, let alone a substantial one - and that filing the information requests did not constitute "union activity."

The evidence also fails to establish that it was concerted activity. The record falls short of establishing that other employees had asked Kaanta to make the information requests or that employees even had discussed with Kaanta any concerns reflected in the information requests. Thus, I conclude that the government has not met its burden of proving that Kaanta had engaged in protected, concerted activities.

Board precedent, such as *DaimlerChrysler Corp.*, 331 NLRB 1324 (2000), cited by the General Counsel, has long held that a "broad, discovery-type standard applies in determining relevance of information requests" and that an employer must furnish requested information that is of even probable or potential relevance to a union's duties. However, as the General Counsel notes, the present complaint does not allege a refusal to provide information, or any other violation of Section 8(a)(5) of the Act. No issue here concerns the Respondent's duty to provide information.

Here, I have concluded that Kaanta was not engaged in union activities because he made the information requests without authorization. Regardless of whether the requested information was relevant, either to Kaanta's purposes or to the Union' statutory functions, that factor would not change the unauthorized nature of the request.

The General Counsel also cited *Nu-Car Carriers, Inc.*, 88 NLRB 75, 76 (1950), in which the Board stated that "interference with intraunion disputes, under certain circumstances, may be violative of the Act to the same extent as coercion exerted in employer-union or interunion conflicts."

The *Nu-Car* holding must be viewed in light of the Supreme Court's decision, a quarter century later, in *Emporium-Capwell v. Western Addition Community Organization*, 420 U.S. 50 (1975). Therein, the Court stated, "Central to the policy of fostering collective bargaining, where the employees elect that course, is the principle of majority rule." 420 U.S. at 62, citing *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1 (1937).

For all these reasons, I conclude that the government has failed to prove, by a preponderance of the evidence, that Respondent violated the Act. Therefore, I will recommend that the Board dismiss the complaint.

When the transcript of this proceeding has been prepared, I will issue a Certification which attaches as an appendix the portion of the transcript reporting this bench decision. This Certification also will include provisions relating to the Findings of Fact, Conclusions of Law, and Order. When that Certification is served upon the parties, the time period for filing an appeal will begin to run.

Throughout the hearing, all counsel have acted with great professionalism and civility, which I truly appreciate. The hearing is closed.